

CEBU UNITED ENTERPRISES, PLAINTIFF AND APPELLEE, VS. JOSE GALLOFIN, COLLECTOR OF CUSTOMS, CEBU PORT, DEFENDANT AND APPELLANT.*G.R. No. 12859, November 18, 1959*

Ponente: REYES, J.B.L., J.

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This suit for mandatory injunction was instituted in the Court of First Instance of Cebu by the Cebu. United Enterprise to compel Jose Gallofin, as Collector of Customs, Cebu Port, to release and deliver to the plaintiff two imported shipments of 7,834 bales of over-issue newspapers purchased by the latter from the United States. As ancillary relief during the pendency of the action, the plaintiff prayed for the issuance of a writ of preliminary mandatory injunction, which was granted by the court after the plaintiff posted a bond in the amount of P60,000.00 in favor of the defendant. Thereafter, the goods were released to the plaintiff, it appearing further that the advance sales tax due on the same had been duly paid upon arrival of the merchandise at port.

The importation of the aforesaid shipments was made under and by virtue of an Import Control Commission License No. 1225 issued by the defunct Import Control Commission. Under the terms of the license, the plaintiff could import, on a no-dollar remittance basis, over-issue newspapers up to the amount or value of \$118,000.00.

The refusal of the defendant to deliver the imported items is premised on his contention that while the five bills of lading covering the two shipments of the over issue newspapers were all dated at Los Angeles, U.S.A. December 17, 1953, or one day before the expiration of the import license in question, the vessels M/S Ventura and M/S Bataan, carrying on board the said merchandise, actually left the ports of embarkation, Los Angeles, and San Francisco, on January 12 and January 16, 1954 respectively. Hence, according to the defendant, the importation must be considered as having been made without a valid import license, because under the regulations issued by the Central Bank and the Monetary Board, "all shipments that left the port of origin after June 30, 1953, and are covered by ICC licenses, may be released by the Bureau of Customs without the need of a Central Bank release certificate; provided they left the port of origin within the period of validity of the licenses". No Central Bank certificate for the release of the goods having been shown or presented to the defendant, the latter refused to make the delivery.

The lower court was thus confronted with the issue of determining whether the valid period of the license in question should be counted up to the time when the vessels carrying the imported items left the ports of origin on January 12 and January 16, 1954, or when the corresponding bills of lading were dated, or December 17, 1953. The court chose the latter date, and held:

"IN VIEW THEREFORE, this Court pronounces judgment making the writ of preliminary mandatory injunction issued against defendant permanent, with orders for the cancellation of plaintiff's bond, this after whatever advance sales tax or any taxes, surcharges and so forth might be due on the goods shall have been paid, without costs."

The defendant appealed to the Court of Appeals. The question raised, however, being purely one of law, the appeal was certified to us pursuant to a resolution of said court dated July 19, 1957. The appeal has no merit.

The authority of the appellee to import was contained in the Import Control Commission License No. 17225, validated on June 18, 1953, and under Resolution 70 of the Commission (adopted March 27, 1952), the same had a six-month period of validity counted from the said date of June 18, 1953. This license states-, among other conditions, that—

"Commodities covered by this license must be shipped from the country of origin before the expiry date of the license, and are subject to sec. 13 of Republic Act No. 650."

Although Republic Act No. 650, creating the Import Control Commission, expired on July 31, 1953, it is to be conceded that its duly executed acts can have valid effects even beyond the life span of said governmental agency.

What is important to consider only is the legal connotation of the word "shipped" as the term was used in the license. Defendant maintains that it is when the vessel leaves the port of embarkation, while plaintiff holds that it is the dates of the bills of lading, which are usually issued after the cargo is placed on board the vessel. That the date of the shipment is the date when the goods for dispatch are loaded on board the vessel, and not necessarily when the ship puts to sea, is clearly implied from our ruling in the case of *U.S. Tobacco Corporation vs. Rufino Luna, et al.*, (87 Phil., 4), wherein we said:

"By section 6 of Act No. 426, all goods including leaf tobacco have been placed under control. Petitioner's merchandise left the port of departure before the passage of that Act but arrived in Manila after its approval. For the purpose of enforcing or applying said Section 6, there can only be one date of importation. Which was the date? The date the goods were ordered the date they were put on board vessel, or the date they reached the port of destination? We are of the opinion that the date of importation is. the date of shipment and not the date of arrival in Manila." (*Italics supplied*)

The issuance of the bill of lading, furthermore, presupposes or carries the presumption that the goods were delivered to the carrier for immediate shipment (13 C. J. S. sec. 123 (2). pp. 235, and cases cited therein). It does not appear here that the bill of lading specified any designated day on which the vessels were to lift anchor, nor was it shown that plaintiff had any knowledge that the vessels *M/S Ventura* and *M/S Bataan* were not to depart soon after he placed his cargo on board and the corresponding bills of lading issued to him. From this latter time, the goods, in contemplation of law, are deemed already in transit (*New Civil Code, Arts. 1531 and 1736*).

It should also be considered that it is entirely outside the shipper's hands to fix the dates of departure, route or arrival of a vessel (unless he charters the whole ship [see Art. 656, Code of Commerce]).

Defendant's reliance upon Central Bank regulations that the shipment licensed must have "left the port of origin within the period of validity of the license" is not maintainable in the present case, because the regulations came into effect only on July 1, 1953 already after issuance of the appellee's license and can not be "read into the same (see 49 Off. Gaz. No. 6, p. 2189).

The Solicitor General's contention that, assuming the six months are counted up to the date the imported goods were placed on board the vessels for shipment the period of validity had likewise already elapsed because, legally, six months mean 180 days, which in this case expired on December 15, cannot now be entertained because the defendant-appellant, under paragraph 3 of his Answer to the "Complaint, expressly admitted that the date appearing on the bills of lading (December 17, 1953) as the date of loading on board the vessels " is one day before the expiration of the validity of the import license". What he only questioned in the court below is the legal connotation of the word "shipped" under the import license.

In the light of the resolution we have taken on the main issue, it becomes unnecessary for us to dwell further upon the other questions raised by the parties.

Wherefore, the appeal should be dismissed and the judgment of the lower court affirmed. So ordered.

Paras, C. J., Bengzon, Padilla, Montemayor, Bautista Angela, Labrador, Endencia, Barrera, and Gutierrez David, JJ., concur.

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